

# Analysis of a Catastrophic Drone Accident: Who Gets Sued and Why



Presented By:

**William H. Walsh**

January 14, 2016

# Overview: Who Gets Sued and Why

- *Scenario:* A catastrophic drone accident will expose vulnerabilities for a number of target defendants
  - **Lawsuit is already written**
  - **Recoverability**
- *Liability:* Recoverability drives definition of “target defendant”
  - Operators may not have sufficient insurance or assets  
Third-party liability and empty chair are key
  - Uncertainties exist with regard to insurance policies and the necessity of specialty insurance
  - Case law not well developed
- *Prevention:* How much preventive technology is enough?
  - Risk Management
  - Efficacy of Updating Technology

# Current Status of the Law

- Federal Aviation Administration (FAA) released requirements for the registration of “hobby” drones in December:
  - FAA requires registration for drones between .55 – 55 pounds
  - Registration numbers linked to owners
  - Registration requires name, home address, and email address
  - Penalties for failure to register include civil fines of \$27,500 and criminal fines of \$250,000 and up to three years imprisonment
- Recent Chicago ordinance regulates where individuals can fly and use drones
  - No drones within 5 miles of airports
  - No drones over schools, churches, hospitals, police station
  - No drones above 400 feet
- California drone bill addressed privacy concerns (vetoed by Governor)
- Recent Paradise Valley, AZ ordinance limits drone use for privacy reasons
- Preemption?

# Complaint Already Written

## HOW MUCH IS MY DRONE PERSONAL INJURY LAWSUIT WORTH?

There is no way to put a dollar amount on a drone injury claim based on a 30 second conversation. There are many factors that determine what your drone injury case is worth, including:

- Your injuries;
- The drone users insurance coverage, if any;
- The liability of the drone accident (specifically whether you contributed to your injuries through some negligent act);
- Your medical bills;
- Your continued medical treatment;
- Your lost wages, if any;
- Your pain, suffering, disability and inconvenience associated with your drone injury, and;
- Whether you were working at the time of your drone injury.

If you have more questions on the value of your potential drone injury lawsuit, speak with a drone injury lawyer for a free case evaluation.



- Plaintiff's lawyers are already prepared
- Anticipating defenses and limiting risks will help prepare likely defendants

# Complaint Already Written (continued)

## DRONE INJURY LAWSUIT: THE PROCESS

As drone injury lawyers, we are familiar with the steps in a drone injury lawsuit. Every case is different; however, the below outline will give you a good idea on what to expect when bringing a potential drone injury lawsuit.

### Step 1 of a Drone Injury Lawsuit: Presuit Investigation

After you retain a lawyer, (s)he will begin the drone injury case pre suit process. This typically involves gathering all the evidence that is needed to make your claim to the drone owner's insurance. For example, your lawyer should gather your medical records, photos of the drone, witness names and your recollection of the incident during this investigation phase. Your lawyer may also take eyewitness statements. This is also called the drone claim evaluation phase, as this is when your lawyer will make a determination as to whether the claim it is worth pursuing.

### Step 2 of a Drone Injury Lawsuit: Putting the Defendant(s) on Notice

Once your attorney has determined your case has merit and your injuries are significant enough to make a drone injury claim, (s)he will put the drone owner on notice. All this means is that your lawyer will send a formal letter to the drone owner, and the drone owner's insurer if applicable, letting them know that (s)he represents you for the potential drone injury lawsuit. The purpose of this notice letter is to obtain the drone owner's insurance dec sheet. This will provide your attorney the drone insurance coverage limits that will apply to your drone lawsuit. This is valuable information to obtain in the beginning of the claim for obvious reasons.

### Step 3 of a Drone Injury Lawsuit: Demanding a Drone Injury Settlement

Once your attorney has the contact information for the drone owner and his/her insurance provider, your attorney will make a settlement offer. In the settlement demand package, your counsel will provide the drone insurance company all your medical bills related to the injury, along with any photographs you took of the damage from the drone crash. The proposed settlement amount is not a decision that your lawyer makes on their own. You, as the injured client, ultimately decide what dollar amount to demand. However, you should defer to your attorney on whether the offer is reasonable. If you make a settlement demand that is unreasonably steep, the drone insurance company will likely not respond. If you can come to an agreement on a dollar value, your drone injury case will settle. If you cannot agree on a number, the claim proceeds into step 4.

### Step 4 of a Drone Injury Lawsuit: Filing the Complaint

After settlement negotiations stall, your attorney needs to file the drone injury lawsuit. The legal document that catalyzes the lawsuit is called the **complaint**. A drone injury case complaint will consist of formal legal allegations made by your attorney against the drone user. In your complaint, your attorney will ask for damages and a jury trial. This is filed with the courthouse of the appropriate venue. Once filed, your attorney will pay a process server to serve the drone injury lawsuit complaint on the defendant(s).

# The Scenario

- 19-year-old computer science student develops bird watching app
- Through app, drone follow and identify species of birds
- Drone follows bird into Sea-Tac
- Both drone and bird get sucked into engine of plane that has taken off
- Plane veers into neighboring houses
- The loss of life onboard and in the neighboring community is staggering



*Estate of Jones, et al.*

- Investigation later confirms a drone flew into the right engine
- Sea-Tac ground radar detected it but it was mistaken for a bird
- Investigation: “amateur R&D”



# Drafting the Complaint

OBJECTIVE: Maximize recoverability.

- Parties
- Jurisdiction
- Causes of Action
- Damages/Prayer for Relief

04/15/2013/THU 11:59 AM Circuit Clerk FAX No. 217 747 5105 P. 003/001

**FILED**  
MAR 07 2013  
Clerk of the Circuit Court

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS,  
Plaintiff,  
-vs-  
DOCK VAN DYKE FINANCIAL, LTD. and  
RICHARD LEE VAN DYKE, JR., individually and  
as President of DOCK VAN DYKE FINANCIAL, LTD.  
Defendants.

NO. 13 CH00207

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

NOW COMES the plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADRIGAN, Attorney General of the State of Illinois, and brings this action for injunctive and other relief against Defendants, DOCK VAN DYKE FINANCIAL, LTD. and RICHARD LEE VAN DYKE, JR., for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 510/1 et seq. and the Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 et seq.

**PUBLIC INTEREST**

1. The Illinois Attorney General believes this action to be in the public interest of the citizens of the State of Illinois and brings this lawsuit pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 510/1(b) and the Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 et seq.

**JURISDICTION AND VENUE**

4. This action is brought for and on behalf of THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADRIGAN, Attorney General of the State of Illinois, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act ("Consumer Fraud Act"), 815 ILCS 510/1 et seq. and the Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 et seq. and her common law authority as Attorney General to represent the People of the State of Illinois.

3. Venue for this action properly lies in Sangamon County, Illinois, pursuant to Sections 3-101 and 3-

Page 1 of 14

# PARTIES

- Drone Operator
- Boeing
- Port of Seattle (SEA-TAC)
- Drone Manufacturer
- Drone Software Manufacturer
- Drone Product Seller
- Others?



# JURISDICTION

- Or, “How can I get my case in to Cook County without getting sanctioned?”
- Boeing
  - Likely FNC
  - Pros and Cons to stretching jurisdictional arguments
- Anyway to defeat diversity?
  - Review domicile of passengers
  - *Hertz* and the situs of various defense corporations

# Causes of Action: Negligence

- Basic tort theory involving duty of care, breach, causation and damages.
- Potential negligent acts could include the following:
  - Failing to maintain UAS, which may lead to mechanical failures
  - Failing to account for weather conditions
  - Losing control of or signal to UAS, leading to injury or damage
  - Permitting someone without proper training to operate UAS
  - Violation of FAA regulations (*per se*)
  - Operating UASs under diminished capacity, *i.e.*, “drunk droning”
- **Target Defendant:**
  - Commercial Operators/Owners
  - Airport



# Causes of Action: Intentional Torts

- Common law intentional tort theories will likely apply in situations where personal injury or property damage occurs.
  - Trespass
  - Intentional Infliction of Emotional Distress
  - Nuisance
  - Assault
  - Battery
  - Invasion of Privacy
  - Fraud
- **Target Defendant:** Operators/Owners



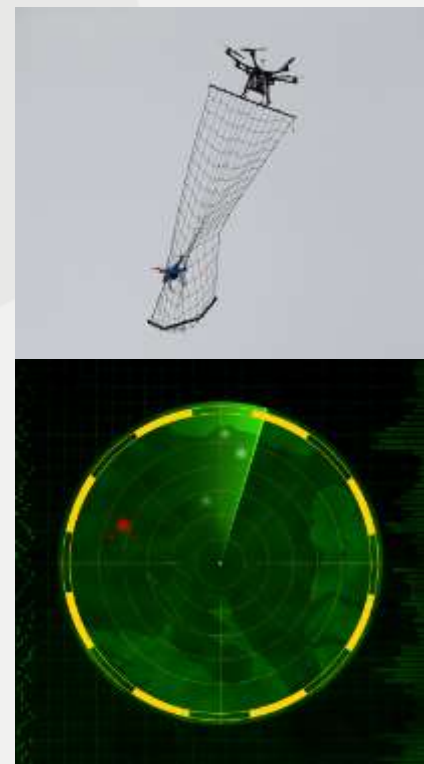
# Causes of Action: Product Liability

- Design Defect:
  - Conditions with the products design that makes the product inherently dangerous
    - Consumer expectations test
    - Risk utility test
- Manufacturing Defects:
  - Mistakes made in the process of constructing a product
- Failure to Provide Adequate Warnings or Instructions:
  - Failures to provide adequate warnings or instructions regarding the product's proper use
- Breach of warranty:
  - If condition constitutes a breach of warranty, can form the basis of tort liability even to a party not in privity
- **Target Defendant:** Manufacturers; Product Sellers



# Airport Liability

- Airports/air traffic controllers arguably have a duty to communicate with UAS operators or prevent UAS from interfering with other aircraft.
- Parallel to bird strike liability: Airports must act with due diligence in adhering to FAA approved wildlife management plans.
- Specific duties may include:
  - Being proactive in preventing collisions (e.g., shutting down UAS in airport airspace—but impact on other systems?)
  - Management plan/protocol in place to prevent UAS collisions
- Risk managers should look at their plans now with the same scrutiny as a hostile lawyer looking for a basis to sue.
- **Target Defendant:** Airports/Air Traffic Control

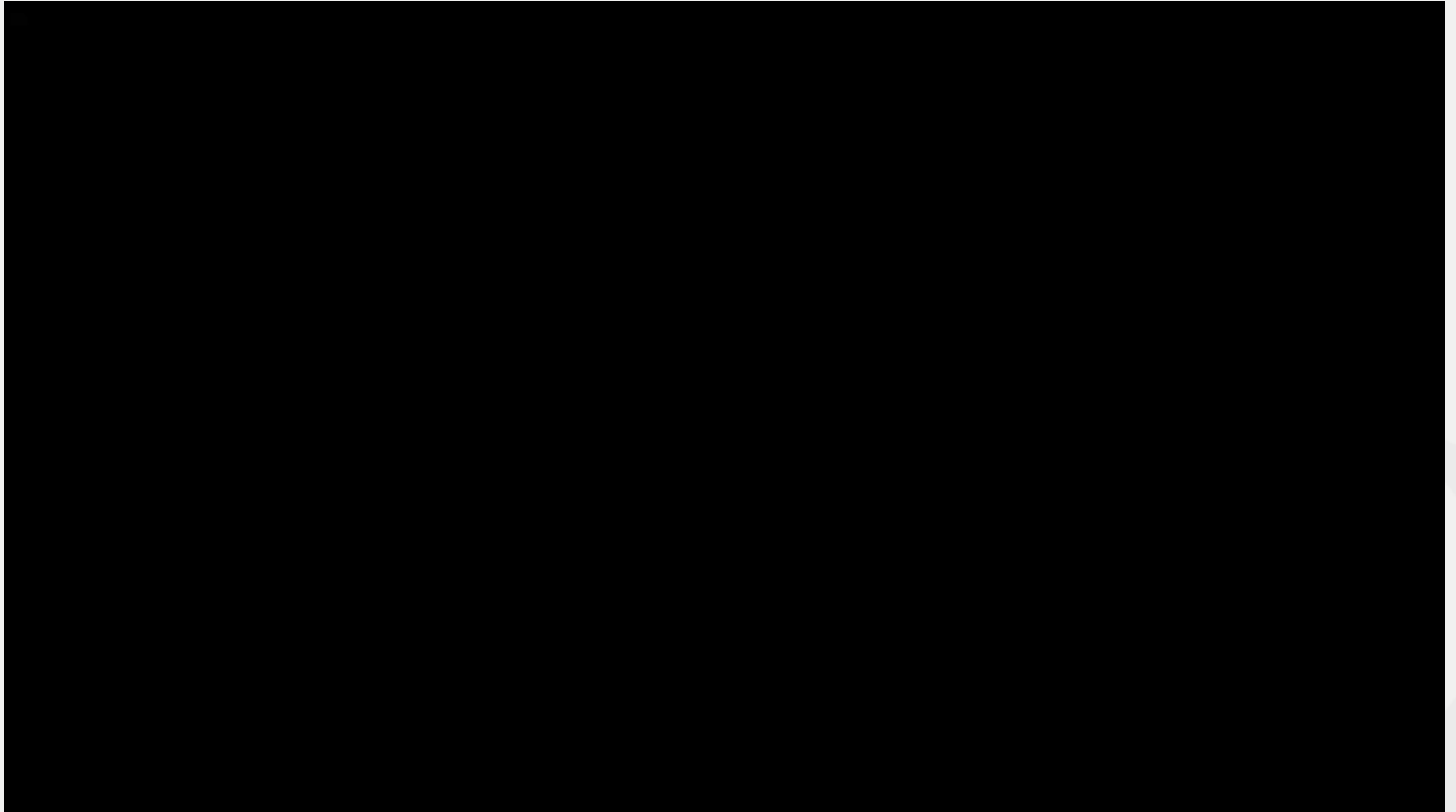




# Other Types of Potential Litigation



# Drone Epic Fails/Crashes





# Right to Privacy

- Invasion of privacy risks are a major concern and legal-political driver
- California's Governor Brown recently vetoed a privacy bill. Strong resistance from industry groups, Amazon, Google, etc.
- Other states have passed laws related to privacy
- Attempts to destroy drones over private property have resulted in liability for the property owner.
- Battle of measures and counter-measures: the selfie drone v. the electronic fence



# Cyber Terrorism: Hacking into Military Drones

“Aviation relies on computer systems extensively in ground and flight operations and air traffic management, and we know we are a target.”

Tony Tyler, IATA Director General on cyber attacks  
and commercial drone risks

“Cyber terrorism may replace the hijacker and bomber and become the weapon of choice on attacks against the aviation community.”

Allianz, German Insurer

Any product with software or that is capable of carrying ordinance or firearms could be vulnerable.

Presented By:

# Prevention

- How much technology is enough?
- A collar or a fence?
- Turf Wars—route planning
- Wildlife management plans and technology
- Risk management – honest assessment of vulnerabilities
- Insurance: reviewing coverages and assessing specialty insurance.



Notional Scenario Provided By NASA for UTM

# Insuring Drones: A New Frontier

- Uncertainty makes this high risk/high reward
- Policies also cover drone operators and on-ground crew members
- Coverage excludes hijacking, unlawful seizure, hacking, spoofing, etc.
- Currently UAS risks are being globally written
- Most policies are modeled after manned aircrafts policies
- CGL policies have aircraft exclusions that would preclude drone coverage



# What's Next?



# FAA Regulations for Small Unmanned Aircraft

## Operational Limitations

- Registration required for UAS between .55 and 55 lbs
- UAS purchased before December 21, 2015 have until February 19, 2016 to register
- UAS purchased after December 21, 2015 must register before operating
- Restricted to Visual Line-Of-Sight (VLOS). UAS must remain close enough for operator to observe aircraft unaided by any lens device
- Maximum airspeed of 100 mph (87 knots)
- Maximum altitude of 400 ft. above ground level
- May not operate over any persons unless directly involved with the operation
- Daylight-only operations. Determined by official sunrise to official sunset, local time.
- First-person cameras will not satisfy “see-and-avoid” requirement
- Weather visibility minimum of 3 miles from control station
- Operations not permitted in Class A airspace (18,000 ft. and above)
- Requires preflight inspection by the operator
- May not operate UAS if person knows or has reason to know of any mental or physical conditions that interfere with operations

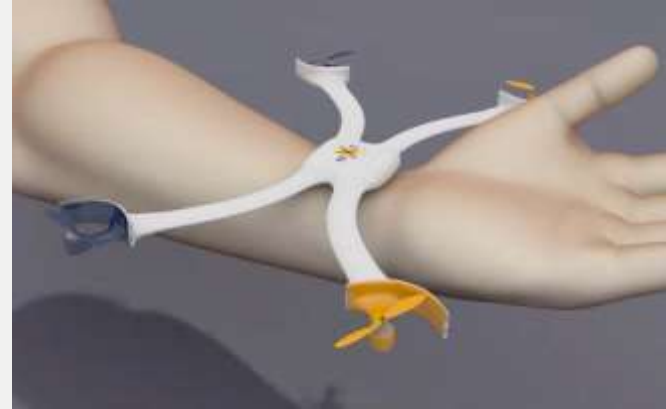
## Operator Limitations

- Pilots of UAS will be deemed “operators”
- Required to:
  - Be at least 17 yrs. old if for commercial purposes
  - Be at least 13 yrs. old for recreational purposes
  - Report accidents resulting in injury/property damage within 10 days thereof
- Must keep UAS within line of sight of operator





# Personal Drone Technology: Nexie



Presented By:

# Drone Technology: Amazon



# QUESTIONS/COMMENTS



# Contact Information

William H. Walsh

[wwalsh@cozen.com](mailto:wwalsh@cozen.com)